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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

NO. 74-526

RONALD DEAN STOLLINGS, *Petitioner,*

v.

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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Petitioner, Ronald Dean Stollings, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit affirming the judgment of conviction from the United States District Court for the Southern District of West Virginia.

OPINION BELOW

The per curiam opinion of the Court of Appeals is not yet reported and is printed in the Appendix to this Petition (Appendix A).

JURISDICTION

The judgment of the Court of Appeals was entered on September 23, 1974, (Appendix B). The jurisdiction of this Court is invoked under Title 28 U.S.C., Section 1254(1).

QUESTIONS PRESENTED

Can a conviction under the federal conspiracy statute, Title 18 U.S.C., Section 371, which is substantially based on hearsay evidence of subsidiary conspiracies remote from the conspiracy with which the defendant was charged, be upheld?

STATUTES INVOLVED

Title 18 U.S.C., Section 371 provides in pertinent part:

> *"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years or both."*

STATEMENT

Defendant, Ronald Dean Stollings, was charged under Title 18 U.S.C. Section 371 with conspiracy to violate federal counterfeiting laws. He was jointly indicted with other individuals who were additionally charged with substantive violations of the federal counterfeiting laws.

The government's case developed a vast quantity of hearsay testimony, consisting of numerous statements and acts relating to subsidiary conspiracies occurring outside the presence of the defendant and without his authority. These subsidiary conspiracies were between defendant's alleged co-conspirators and third parties. Such testimony, while normally inadmissable absent a showing that the out-of-court declarations and acts were made by co-conspirators while the alleged conspiracy was still in progress and in pursuance thereof, *Fiswick v. United States* 329 U.S. 211, was admitted over defendant's objections although no evidence was adduced connecting the defendant with any subsidiary conspiracy.

REASONS FOR GRANTING THE WRIT

FIRST: The Fourth Circuit has decided an important question of federal law in a way which conflicts with applicable decisions of the United States Supreme Court.

In *Grunewald v. United States*, 353 U.S. 391, 1 L. ed 2d 931, 77 S. Ct. 963 (1957), the rule developed that subsidiary activities occuring after the completion of the main conspiracy cannot be taken as overt acts in furtherance of the main conspiracy, i.e., a continuing agreement cannot be implied from the mere fact of conspiracy. As there stated, "overt acts . . . are meaningful only if they are within the scope of the original conspiratorial agreement."

In the present case, as in *Grunewald*, the proper test for admissibility should have been a showing "that the act(s) were done in furtherance of a prior criminal agreement among the conspirators." (See footnote 16 at p. 404 of Grunewald). None was ever shown in the present case. The government never proved that it was part of the alleged original conspiracy that certain defendants would further conspire with third parties in another state for the purpose of passing counterfeit notes. Therefore, the declarations and acts occuring outside the scope of the alleged original agreement and without either the knowledge or authority of the petitioner should in no way have been admitted against him.

The argument that a conspiracy, no matter how limited, embraces whatever subsidiarily occurs thereafter has been refuted repeatedly. In *Fiswick v. United States*, 329 U.S. 211, 91 L. ed 196 (1946), the Supreme Court wrote:

> *"Though the result of a conspiracy may be continuing, the conspiracy does not thereby become a continuing one. See United States v. Irvine (US) supra. Continuity of action to produce the unlawful result, or as stated in United States v. Kissel, supra (218 US p 607, 54 L ed 1178, 31 S Ct 124), "continuous cooperation of the conspirators to keep it up is necessary."*

Petitioner's trial failed to produce any evidence of continuous cooperation between petitioner and any of the alleged co-conspirators. In fact, there was no evidence that he even knew or had reason to know of the existence of those to whose extensive testimony he objected, although there was evidence to the contrary.

In *Krulewitch v. United States*, 336 U.S. 440, 93 L. ed 790 (1948), the government posed a similar argument, suggesting that even after the central aim of a conspiracy is complete, through success or failure, there exists an implicit subsidiary phase to conceal the original objective. The Court refused to accept this, reasoning: 1) Under the government's theory a conspiracy would theoretically never come to an end; 2) that under this rule most out-of-court statements could be offered into evidence as tending to shield co-conspirators; and, 3) an implicit conspiracy rule would create a breach of the general rule against the admission of hearsay evidence. The same reasoning applies in the present case.

SECOND: The decision of the Fourth Circuit is in substantial conflict with important decisions of other circuits.

As the First Circuit pointed out in *United States v. Spock*, 416 F. 2d 165 (1969), " . . . conspiracy law . . . is directed only at those who have intentionally agreed to further the illegal enterprise." In the case herein, since none of those offering hearsay testimony were shown to be co-conspirators, the rule allowing admission of out-of-court declarations of co-conspirators has no application.

The Fifth Circuit was unequivocal on this point in *Causey v. United States*, 352 F. 2d 203, 207 (1965). There it stated:

> *"To establish the intent essential to a conviction for conspiracy the evidence of knowledge must be clear and not equivocal. A suspicion, however strong, is not proof and will not serve in lieu of proof . . . proof . . . must convince beyond a reasonable doubt that a conspiracy existed, that the defendant knew it, and with that knowledge intentionally did some act . . . to further or carry on that conspiracy."*

The Seventh Circuit is in agreement. In *United States v. Varelli*, 407 F. 2d 735, 743 (1969) it stated, " . . . parties to the agreement must know of each other's existence."

Finally, in *United States v. Steele*, 469 F. 2d 165 (1972) the Ninth Circuit noted "A defendant must knowingly act in furtherance of the conspiracy" and " . . . those having no knowledge of the conspiracy are not conspirators."

CONCLUSION

A vital distinction must be made between a single conspiracy and subsidiary conspiracies of which the defendant had no knowledge or reason to know. In petitioner's case the essential element necessary to admission of the out-of-court declarations was a showing that the acts and statements admitted were done in furtherance of a prior criminal agreement to which Ronald Dean Strollings was a part. This element was missing.

Inasmuch as there is substantial conflict among the circuits and with previous decisions of this Court, and because of the fundamental practical importance of the issues, your petitioner respectfully requests that this petition for writ of certiorari be granted.

Respectfully submitted,

LEONARD W. YELSKY, Esq.
Counsel for Petitioner

DAVID A. SNOW, Esq.
Of Counsel

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 74-1087

United States of America, *Appellee,*

versus

Ronald Dean Stollings, *Appellant.*

No. 74-1088

United States of America, *Appellee,*

versus

Kermit Stollings, *Appellant.*

Appeal from the United States District Court for the Southern District of West Virginia, at Huntington. Sidney L. Christie, District Judge.

Argued September 6, 1974. Decided September 23, 1974

Before Haynsworth, Chief Judge, and Russell and Widener, Circuit Judges.

Leonard W. Yelsky (Yelsky, Eisen and Singer on brief) for Appellant in No. 74-1087; James D. Nash, Jr., (Greene, Ketchum and Baker on brief) for Appellant in No. 74-1088; Wayne A. Rich, Jr., Assistant United States Attorney, (John A. Field, III, United States Attorney, and Robert B. Allen, Third-year law student, on brief) for Appellee.

PER CURIAM:

A jury convicted Ronald Dean Stollings and Kermit Stollings of conspiracy to buy, transfer, receive and deliver counterfeit money in violation of 18 U.S.C. § 371. It convicted Kermit Stollings of possession of counterfeit money in violation of 18 U.S.C. § 472 and of delivering counterfeit money in violation of 18 U.S.C. § 473.

Upon consideration of the record, briefs and oral argument, we find no reversible error and affirm the judgment of the District Court.

AFFIRMED.

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 74-1087

United States of America, *Appellee,*

versus

Ronald Dean Stollings, *Appellant.*

No. 74-1088

United States of America, *Appellee,*

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PER CURIAM:

A jury convicted Ronald Dean Stollings and Kermit Stollings of conspiracy to buy, transfer, receive and deliver counterfeit money in violation of 18 U.S.C. § 371. I convicted Kermit Stollings of possession of counterfeit money in violation of 18 U.S.C. § 472 and of delivering counterfeit money in violation of 18 U.S.C.§ 473.

Upon consideration of the record, briefs and oral argument, we find no reversible error and affirm the judgment of the District Court.

AFFIRMED.

